

PART Env-Dw 303 GROUNDWATER SOURCES OF BOTTLED WATER

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PART Env-Dw 303 GROUNDWATER SOURCES OF BOTTLED WATER

Statutory Authority: RSA 485:1(g), RSA 485:3, XI

REVISION NOTE:

Document #8998, effective 9-29-07, readopted with amendments and renumbered former Part Env-Ws 389, entitled Groundwater Sources of Bottled Water, under a new subtitle as Part Env-Dw 303. The redesignation from subtitle Env-Ws to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Document #8998 replaces all prior filings for rules formerly in Env-Ws 389. The prior filings for rules in former Env-Ws 389 include the following documents:

#6973, eff 4-5-99

#8850, INTERIM, eff 4-5-07, EXPIRES: 10-2-07

Env-Dw 303.01 Purpose. The purpose of these rules is to establish procedures and standards for the selection of new groundwater sources of water used in the production of bottled water.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.02 Applicability. These rules shall apply to new groundwater sources of water used in the production of bottled water.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.03 Definitions.

(a) "Artesian water" means "artesian water" as defined in 21 CFR 165.110(a)(2)(i), 4-1-06 edition, namely "the name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer".

(b) "Borehole" means a hole dug, drilled, or bored into the earth.

(c) "Bottled water" means "bottled drinking water" as defined in 21 CFR 165.110(a)(1), namely "water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents."

(d) "Community water system" means "community water system" as defined in RSA 485:1-a, I, namely "a public water system which services at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents."

(e) "Conceptual hydrogeologic model" means a description of geology, aquifer hydraulics, and recharge patterns that incorporates published information, available field data, and conservative assumptions for the potential impact area.

(f) "Cone of depression" means a depression in the potentiometric surface of a body of groundwater that has the general shape of an inverted cone and develops around a well from which water is being withdrawn.

(g) "Confined aquifer" means a water-saturated geologic unit within which groundwater is under pressure significantly greater than that of the atmosphere, having as an upper surface the bottom of an impermeable bed or a bed of distinctly lower permeability than the aquifer.

- (h) "Contamination" means the degradation of natural water quality as a result of human activities.
- (i) "Department" means the department of environmental services.
- (j) "Groundwater" means "groundwater" as defined in RSA 485-C:2, VIII namely, "subsurface water that occurs beneath the water table in soils and geologic formations."
- (k) "Hydrogeology" means the study of the occurrence, movement, and chemical nature of surface water and groundwater in relation to its geologic environment and water supply wells.
- (l) "Known contamination source" means a location from which contaminants are known to emanate and cause the underlying groundwater to be of unacceptable quality.
- (m) "Large groundwater withdrawal" means "large groundwater withdrawal" as defined in RSA 485-C:2, IX-a, namely "any withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period at a single property or place of business."
- (n) "Natural orifice" means an orifice occurring naturally at the land surface, without any alteration of the land surface.
- (o) "New source" means a source sited after April 5, 1999 or a source sited before April 5, 1999 that has an increase in the approved permitted production volume.
- (p) "Non-transient, non-community water system" means a "non-transient, non-community water system" as defined in RSA 485:1-a, XI, namely "a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year."
- (q) "Permitted production volume" means the maximum volume of groundwater allowed by the department to be withdrawn or pumped from a groundwater source of bottled water in any 24 hour period. It is the volume used to define the wellhead protection area.
- (r) "Potential impact area" means the area identified through an impact assessment as described in RSA 485-C:21, V-e.
- (s) "Potential contamination source" means human activities or operations upon the land surface that pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. The term includes those sources listed in RSA 485-C:7, II.
- (t) "Potentiometric surface" means the surface that represents the level to which water rises when exposed to atmospheric pressure.
- (u) "Pumping test production rate" means the constant production rate that is maintained throughout a source evaluation program, which is used to calculate the permitted production volume.
- (v) "Qualified professional" means an individual who, by reason of education and experience in hydrogeology, is able to quantitatively analyze and reliably interpret geologic and hydrogeologic measurement and information.
- (w) "Regulated contaminant" means "regulated contaminant" as defined in RSA 485-C:2, XIII, namely "any physical, chemical, biological, radiological substance or other matter, other than naturally occurring substances at naturally occurring levels, in water which adversely affects human health or the environment."
- (x) "Secondary standard" means the secondary maximum contaminant levels established primarily for aesthetic qualities of drinking water relating to the public acceptance of the water in accordance with Env-Ws 310-316 or successor rules in subtitle Env-Dw.

(y) "Spring water" means "spring water" as defined in 21 CFR 165.110(a)(2)(vi), 4-1-06-edition, namely "water derived from an underground formation from which water flows naturally to the surface of the earth".

(z) "Stratum" means a geologic formation or formations, or a discontinuity in or between geologic formations, which may in some cases serve as a source of water or as a pathway for groundwater to reach the surface.

(aa) "Surface water" means "surface waters of the state" as defined in RSA 485-A:2, XIV namely "perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial."

(ab) "Well" means "well" as defined in RSA 485-C:2, XVII, namely "a hole or shaft sunk into the earth to observe, sample, or withdraw groundwater."

(ac) "Well water" means water derived from a groundwater source that is neither artesian water nor spring water.

(ad) "Wellhead" means the conveyance through which, and location where, the groundwater source of bottled water reaches the land surface, such as the well casing, spring collection box, or the natural orifice of a spring.

(ae) "Wellhead protection area" means "wellhead protection area" as defined in RSA 485:1-a, XVIII, namely "the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield."

(af) "Wetlands" means "wetlands" as defined in RSA 482-A:2, X, namely "an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Wetlands include swamps, marshes, bogs, and similar areas.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.04 Application Submittal. The applicant for a new groundwater source for bottled water shall, prior to the use of the source:

(a) Provide a description of the source location which demonstrates that the source meets surface water setbacks in accordance with Env-Dw 303.05;

(b) Provide a description of the sanitary protective area which demonstrates that the land is under the control of the supplier of the water and will be maintained in a natural state in accordance with Env-Dw 303.06;

(c) Develop a conceptual hydrogeologic model of the wellhead protection area in accordance with Env-Dw 303.07;

(d) Complete a preliminary estimate of the wellhead protection area in accordance with Env-Dw 303.08;

(e) Complete a preliminary contamination source and water resource and use inventory in accordance with Env-Dw 303.09;

(f) If desired, request a pre-test conference with department staff in accordance with Env-Dw 303.10;

(g) Complete a source evaluation program in accordance with Env-Dw 303.11;

(h) Establish the permitted production volume in accordance with Env-Dw 303.12;

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- (i) Refine the wellhead protection area in accordance with Env-Dw 303.15;
- (j) Develop a wellhead protection program in accordance with Env-Dw 303.16;
- (k) Update and revise the contamination source and water resource and use inventory in accordance with Env-Dw 303.17;
- (l) Establish a contamination control program for known contamination sources within the wellhead protection area in accordance with Env-Dw 303.18;
- (m) Submit a report to the department as required by Env-Dw 303.20;
- (n) Submit a water conservation plan prepared in accordance with Env-Ws 390 or successor rules in subtitle Env-Wq;
- (o) Prepare and submit a source classification statement in accordance with Env-Dw 303.13;
- (p) Submit a copy of the well completion report prepared in accordance with We 800 to demonstrate that the construction of the wellhead complies with standards established by the New Hampshire water well board pursuant to RSA 482-B; and
- (q) Obtain written department approval of the site as a new groundwater source of bottled water in accordance with Env-Dw 303.21.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.05 Wellhead Location.

- (a) The wellhead of a new groundwater source of bottled water shall be at least 50 feet from surface waters, except that if the surface water is a spring, the wellhead may be within 50 feet of the spring if the applicant demonstrates that surface water generated from the spring does not recharge the groundwater source.
- (b) The wellhead of a new groundwater source of bottled water shall not be subject to flooding at the 100-year recurrence interval. The applicant may fill to elevate a wellhead and pumping station for flood protection purposes, provided that all required permits for placing of fill within wetlands and flood plains have been obtained. However, where spring water is collected with the use of an external force, no filling of the spring's natural orifice shall be allowed.
- (c) A description of the 100-year flood elevation, the flood plain location, and the nearest surface waters shall be provided in the report prepared in accordance with Env-Dw 303.20 as documentation that the source location meets the criteria of Env-Dw 303.04.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.06 Sanitary Protective Area.

- (a) The purpose of the sanitary protective area is to provide an area in the immediate vicinity of the source within which there is minimal risk of groundwater contamination.
- (b) The sanitary protective area shall be a circle, centered on the wellhead, with a radius based upon the permitted production volume as set forth in Table 303-1 below:

Table 303-1 Sanitary Protective Area Radii

Permitted Production Volume (gallons)	Radius (feet)
0 - 14,400	150
14,401 - 28,800	175
28,801 - 57,600	200
57,601 - 86,400	250
86,401 - 115,200	300
115,201 - 144,000	350
greater than 144,000	400

(c) Where more than one well is inside a sanitary protective area, the individual sanitary protective area for each well shall be based on the combined permitted production volume of all of the wells, unless the applicant clearly demonstrates that the wells are not hydraulically interconnected.

(d) Subject to (e), below, the sanitary protective area may be reduced in size or changed in shape if the applicant clearly demonstrates that there is no hydraulic connection between the source and that portion of the sanitary protective area sought to be excluded.

(e) The sanitary protective area shall never be less than 75 feet from the source in any direction.

(f) The department shall not approve a source unless the supplier of water owns all the land within the sanitary protective area or controls it by other legal means. If the supplier's control of the sanitary protective area is time-limited, the department's approval of the source shall be equally time-limited.

(g) If a source is approved, the supplier of water shall maintain the sanitary protective area of the source in a natural state at all times except for land clearing, terrain alteration, structures, and activities necessary for the maintenance of the source.

(h) No underground utilities shall be installed within the sanitary protective area except for conduits for potable water or electrical or communication lines. In specific cases where this requirement imposes unusual constraints on construction, the department shall allow other installations if the applicant demonstrates that construction methods and materials will be used that are consistent with the purpose of the sanitary protective area.

(i) The applicant shall provide a description of existing and proposed land use activities and documentation of legal control of the sanitary protective areas in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.07 Conceptual Hydrogeologic Model.

(a) The applicant shall engage a qualified professional to develop a conceptual hydrogeologic model of the source and surrounding area.

(b) The conceptual model shall be:

(1) Developed in accordance with Env-Ws 388.06 or successor rules in subtitle Env-Wq; and

(2) Refined based on the results of the source evaluation performed in accordance with Env-Dw 303.11.

(c) The refined conceptual model shall be presented in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.08 Preliminary Estimate of the Wellhead Protection Area.

(a) The applicant shall engage a qualified professional to develop a preliminary estimate of the wellhead protection area based on the conceptual hydrogeologic model developed in accordance with Env-Dw 303.07.

(b) The preliminary estimate of the wellhead protection area shall be a circle with a 4,000 foot radius centered on the source if preliminary data is not adequate to construct a regional conceptual potentiometric surface map or otherwise identify the recharge areas for the source.

(c) The qualified professional shall refine the preliminary estimate of the wellhead protection area in accordance with Env-Dw 303.15 based on the results of the source evaluation program performed in accordance with Env-Dw 303.11.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.09 Preliminary Contamination Source and Water Resource and Use Inventories.

(a) The applicant shall complete a preliminary contamination source and water resource and use inventory of the wellhead protection area before the source evaluation required by Env-Dw 303.11 is conducted.

(b) The inventory shall be performed in accordance with Env-Ws 379.09 or successor rules in subtitle Env-Dw.

(c) The applicant shall provide a map showing the location of all contamination sources and water resources and uses identified in accordance with (a), above, in the report required by Env-Dw 303.20. The map shall include the preliminary estimate of the wellhead protection area and shall have as its base, the original or clear color copy of a United States Geological Survey (USGS) topographic quadrangle map at a scale of 1:24,000 or 1:25,000.

(d) The applicant shall:

- (1) Provide the descriptions required by (a), above, in the report required by Env-Dw 303.20; and
- (2) Identify each information source and all search dates.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.10 Optional Pre-Test Conference.

(a) Department staff responsible for implementing these rules shall, upon request, meet with the applicant and the qualified professional engaged by the applicant to review a detailed proposal of the work to be performed under these rules.

(b) To request a pre-test conference, the applicant shall submit the request to the department in writing and include the following with the request:

- (1) A sketch at a scale of approximately one inch equals 100 feet depicting the area and any land uses within 500 feet of the proposed source, with a description of how the site complies with the source location requirements in Env-Dw 303.05;
- (2) A map showing the potential impact area for the withdrawal if the withdrawal is designated as a large groundwater withdrawal and having, as its base, the original or clear color copy of a USGS

topographic quadrangle map at a scale of 1:24,000 or 1:25,000;

(3) A description of the conceptual hydrogeologic model developed in accordance with Env-Dw 303.07;

(4) A description of the preliminary estimate of the wellhead protection area delineated in accordance with Env-Dw 303.08;

(5) The preliminary contamination source and water resource and use inventory completed in accordance with Env-Dw 303.09; and

(6) A description of the source evaluation program, wellhead protection area delineation methodology, and contamination control program to be conducted as required by Env-Dw 303.04.

(c) During the conference, department staff shall provide feedback on the acceptability of the site and proposed approaches under these rules within the limitations of what is known about the site at the time of the conference.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.11 Source Evaluation Program. A source evaluation shall be conducted for all new groundwater sources of bottled water as follows:

(a) The applicant shall engage a qualified professional to design and implement a source evaluation program for all new sources;

(b) The objectives of the source evaluation shall be to gather the information needed to:

- (1) Refine the conceptual hydrogeologic model;
- (2) Refine the wellhead protection area delineation;
- (3) Establish the chemical quality of the source; and
- (4) Develop, if necessary, a contamination control program;

(c) For any wellhead where external force will be used to collect water, the source evaluation shall be conducted in accordance with the pumping test requirements for large community water system wells specified in Env-Ws 379.11 or successor rules in subtitle Env-Dw, except as altered by the following:

(1) For a spring or artesian water, the following shall apply:

- a. The source evaluation shall address both the natural high and low flow conditions of the source;
- b. Low flow conditions shall be evaluated by conducting the source evaluation during a low flow period; and
- c. Low flow conditions may be predicted using hydrogeologically-valid methods provided that a monitoring program is designed and implemented to evaluate the potential for adverse impacts as described in RSA 485-C:21, V-c;

(2) For a spring where a borehole will be used to collect water, the source evaluation shall include the measurement of flows from the spring's natural orifice at least as often as water levels are measured in the borehole, after the first 10 minutes of pumping and of recovery; and

(3) Water quality sampling shall be conducted as in accordance with Env-Ws 379.12 or successor rules in subtitle Env-Dw, and additional samples shall be collected and analyses performed if necessary to establish a contamination control program in accordance with Env-Dw 303.18;

(d) For any wellhead where no pumping or other external force will be used to collect water, the source evaluation shall be conducted as follows:

- (1) The source evaluation shall address both the natural high and low flow conditions of the source;
- (2) At least 2 monitoring wells shall be placed to meet the objectives of the source evaluation program. Additional monitoring wells shall be required when preliminary information indicates they are necessary to meet the objectives of the source evaluation program as specified in Env-Dw 303.11(b);
- (3) The evaluation shall be conducted for 10 continuous days as follows:
 - a. Monitoring during the first 3 days shall be conducted with no withdrawal of water from the source;
 - b. Monitoring from the beginning of day 4 through the end of day 8 shall be conducted while water is withdrawn from the source at the desired permitted production volume; and
 - c. From the beginning of day 9 to the end of day 10, recovery monitoring shall be conducted with no withdrawal from the source;
- (4) Water collected during the evaluation shall be discharged at a location which ensures the water cannot provide recharge to the source;
- (5) Flow collected from the source shall be measured at least twice daily at intervals of approximately 12 hours, using a calibrated flow meter, weir, flume, or similar device provided it is measured over a period of one minute or less;
- (6) Water levels in the source and in the monitoring wells shall be measured twice daily, concurrently with flow rate measurements;
- (7) If the source ceases to flow, the time that flow ceases and the time it starts again shall be recorded, and measurement of water levels shall replace flow measurements during any time a source is not flowing;
- (8) Weather conditions, including rainfall amounts at the site, shall be recorded throughout the evaluation;
- (9) Water levels in any surface water located within 500 feet of the source shall be measured to the nearest 0.01 foot and recorded at least twice daily, concurrent with discharge measurements, during the evaluation;
- (10) The horizontal distance between each observation well, surface water measurement location, and the source shall be measured to the nearest foot;
- (11) The vertical elevation of the observation wells, surface water, and the source, shall be established to the nearest 0.01 foot and referenced to the National Geodetic Vertical Datum of 1929 or subsequent national datum;
- (12) Water level and flow data shall be tabulated and plotted;

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(13) A regional groundwater flow net shall be constructed which shows flow directions in the horizontal and vertical planes and indicates hydraulic boundaries and recharge sources;

(14) Data collected pursuant to (1) through (13), above, shall be used to refine the wellhead protection area at the desired permitted production volume for 180 continuous days without recharge from rainfall; and

(15) Water quality sampling shall be as follows:

- a. A water quality sample shall be taken within the first 2 hours of the evaluation;
- b. A second water quality sample shall be taken at the mid-point of the evaluation;
- c. A third water quality sample shall be taken during the last day of the evaluation;
- d. The samples shall be analyzed by a laboratory that has been accredited for drinking water testing pursuant to Env-C 300;
- e. The samples collected pursuant to a. and b., above, shall be analyzed for volatile organic compounds, iron, manganese, pH, specific conductance, hardness, chlorides, sodium, nitrates, radon, and coliform bacteria;
- f. The sample collected pursuant to c., above, shall be analyzed for those contaminants required to be monitored in accordance with Env-Ws 310 through 316 or successor rules in subtitle Env-Dw; and
- g. Additional samples shall be collected and analyses performed if necessary to establish a contamination control program in accordance with Env-Dw 303.18.

(e) Alternative source evaluation programs shall be accepted, provided the applicant demonstrates that the alternative addresses the source evaluation objectives of (b), above, and achieves equivalent or superior results.

(f) Source evaluation methods, procedures, data, laboratory reports, and other supporting documentation shall be presented and results evaluated in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.12 Permitted Production Volume.

(a) A permitted production volume shall be established by the applicant through an analysis of data derived from the source evaluation required in accordance with Env-Dw 303.11. This volume shall represent the withdrawal for which the wellhead protection area is delineated and, if necessary, the contaminant control program is developed.

(b) The permitted production volume shall be calculated by the applicant by applying the natural flow rate or pumping test production rate over 24 continuous hours of operation. Although the actual rate at which water is withdrawn from an approved source may vary, the permitted production volume shall not be exceeded.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.13 Source Classification.

(a) A source may be classified as artesian water if the water is from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer. Artesian water may be collected with the

assistance of external force to enhance natural underground pressure.

(b) A source may be classified as spring water if it is derived from an underground formation from which water flows, under a natural force, to the surface of the earth through a natural orifice.

(c) Spring water classified in accordance with (b), above, shall be collected as follows:

(1) From the spring itself; or

(2) Through a borehole tapping the underground formation feeding the spring.

(d) The location of the spring shall be identified.

(e) Spring water classified in accordance with (b), above, shall be collected using an external force only if the water is from the same underground stratum of the spring, as demonstrated by the following:

(1) Observing and recording a measurable hydraulic connection, using a hydrogeologically-valid method, between the bore hole and the natural spring; and

(2) Collecting water quality samples indicating that water derived from the borehole has all the same physical properties, before treatment, and is of the same composition and quality, as the water that flows naturally to the surface of the earth.

(f) If spring water is collected with the use of an external force, water shall continue to flow naturally to the surface of the earth through the spring's natural orifice.

(g) A source shall be classified as well water if it fails to meet the criteria for artesian or spring water in accordance with (a) or (b), above.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.14 Source Classification Statement.

(a) The applicant shall engage a qualified professional to prepare a source classification statement that designates the source as being artesian water, spring water, or well water.

(b) The classification statement shall include the following:

(1) A statement that the qualified professional understands the definitions of artesian water, well water, and spring water contained in Env-Dw 303.02;

(2) A statement that a sufficient hydrogeologic investigation has occurred and that documentation has been prepared to demonstrate that the source meets the requirements for classification contained in Env-Dw 303.13;

(3) A statement that the documentation that supports the classification has been provided to the supplier of water; and

(4) The name, signature, title, and qualifications of the qualified professional.

(c) The supplier of water shall keep all information regarding source classification provided by the qualified professional, and shall produce this information and demonstrate, on request, to department representatives, that the source meets the classification specified in the source classification statement.

(d) The source classification statement shall be submitted to the department separately from the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.15 Wellhead Protection Area Delineation.

(a) The wellhead protection area shall be delineated for new groundwater sources of bottled water at the permitted production volume in accordance with wellhead protection area delineation methodology for new large community water system sources in accordance with Env-Ws 379 or successor rules in subtitle Env-Dw.

(b) The preliminary estimate of the wellhead protection area completed in accordance with Env-Dw 303.08 shall be refined with respect to no-flow boundaries, surface water connections, existing withdrawals, and any other hydrogeologic influences.

(c) The delineation and supporting evaluations and documentation shall be presented in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.16 Wellhead Protection Program.

(a) The applicant shall establish a wellhead protection program that includes:

(1) Updating the preliminary contamination source inventory required by Env-Dw 303.09 and Env-Dw 303.17 at intervals no greater than 3 years;

(2) Sending notification to the owner of each known contamination source and potential contamination source listed in the inventory within 90 days of system startup and at intervals no greater than 3 years thereafter, which notification shall include:

- a. The name, mailing address, and daytime telephone number of the applicant;
- b. A statement that the property on which the known or potential contamination source is located is in a wellhead protection area of a potable water supply and thus is considered to have the potential for groundwater contamination;
- c. A copy of groundwater educational material that the department has developed or approved;
- d. Notification that any discharge of a regulated contaminant to the groundwater is prohibited unless it is specifically authorized by a groundwater discharge permit issued pursuant to Env-Wq 402; and
- e. The name and daytime telephone number of a contact at the department to whom questions can be directed; and

(3) Establishment of a water quality monitoring well network, when existing potential contamination sources may pose a significant risk to groundwater contamination.

(b) The applicant shall include a description of the wellhead protection program in the report required by Env-Dw 303.20.

(c) The applicant shall demonstrate ongoing compliance with the wellhead protection program by providing the department with a list of recipients and the date of the educational mailing program for each round of notifications.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.17 Contamination Source and Water Resource and Use Inventory Update and Revision.

(a) The preliminary inventory completed in accordance with Env-Dw 303.09 shall be updated if it is more than 90 days old at the time the application is received by the department.

(b) The preliminary inventory shall be revised to reflect any expansion or decrease in the wellhead protection area after it is refined in accordance with Env-Dw 303.15.

(c) The applicant shall include the updated and revised inventory in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.18 Contamination Control Program.

(a) The applicant shall establish a contamination control program that minimizes the risk of contamination from known sources of contamination.

(b) The contamination control program shall include provisions and a schedule for remediation and monitoring of residual contamination from all known contamination sources, identified as a result of the contamination source inventory performed in accordance with Env-Dw 303.09 and Env-Dw 303.17, to ensure that contamination does not reach the groundwater source of bottled water.

(c) The monitoring program established in accordance with (b), above, shall include collection of water quality samples from new or existing wells located near potential contamination sources identified through the contamination source inventory performed in accordance with Env-Dw 303.09 and Env-Dw 303.17, when applicable, to ensure that a potential impact to groundwater does not reach the source of bottled water.

(d) Compliance of a known contamination source with the conditions of a groundwater management permit issued under Env-Wm 1403 or Env-Or 607 shall constitute an adequate control program.

(e) A description of the contamination control program and supporting evaluations and documentation shall be provided in the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.19 Construction Design. The construction of the wellhead shall comply with standards established by the New Hampshire water well board pursuant to RSA 482-B. The applicant shall submit a well completion report prepared in accordance with We 800 with the report required by Env-Dw 303.20.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.20 Report. The applicant shall submit a report of all the information and materials required by Env-Dw 303.05 through Env-Dw 303.19 to the department.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.21 Approval of New Sources.

(a) Upon receipt of a report submitted pursuant to Env-Dw 303.20, the department shall review the report to determine if all required information and materials are included. If the report does not contain all of the required information and materials, the department shall notify the applicant in writing of:

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- (1) What information and materials are missing;
- (2) A reasonable deadline for submitting the information and materials, established based on the type and quantity of information and materials needed; and
- (3) The consequences of not providing the specified information and materials by the specified deadline, namely that the application will be denied.

(b) If the applicant does not provide the missing information and materials by the deadline specified in the notice sent pursuant to (a), above, the department shall deny the application and notify the applicant in writing of the denial and the basis therefor.

(c) Subject to (d), below, the department shall approve the source and notify the applicant and the department of health and human services that the source has been approved if it determines that:

- (1) The report submitted pursuant to Env-Dw 303.20 contains all the required information; and
- (2) All specified requirements of Env-Dw 303 have been met.

(d) The proposed source shall be denied under the following conditions:

- (1) If an inadequately controlled contamination source is present in the source water protection area;
or
- (2) If the applicant has failed to perform any activity or to meet any of the requirements contained in these rules.

(e) For a withdrawal designated as a large groundwater withdrawal, approval by the department shall be contingent on compliance with notification, impact assessment, and mitigation requirements pursuant to RSA 485-C:21.

(f) Source approval shall lapse 5 years after issuance if the source has not started producing bottled water within that time.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.22 Increasing the Permitted Production Volume. Withdrawal from a groundwater source of bottled water shall not exceed the permitted production volume determined in accordance with Env-Dw 303.12. Any request for increasing the permitted production volume shall require the submission of the same information necessary for approval of a new source.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.23 Sampling Requirements for New Sources. The supplier of water from a new groundwater source of bottled water shall sample and test in accordance with He-P 2105.02.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.24 Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Any person affected by this part thus may request a waiver of specific rules outlined in this part in accordance with this section.

- (b) To request a waiver, the applicant shall submit the following information in writing to the department:
- (1) A description of the site to which the waiver request relates, including the name and address of the site;
 - (2) A reference to the specific section of the rules for which a waiver is being sought;
 - (3) A full explanation of why a waiver is necessary;
 - (4) Whether the waiver is needed for a limited or indefinite period of time;
 - (5) A full explanation with supporting data of the alternatives, if any, proposed to be implemented in lieu of the section's requirements; and
 - (6) A full explanation of how the requested waiver is consistent with the intent of RSA 485:8, RSA 485:48, and RSA 485-C:21, and would adequately protect human health and the environment.

(c) The department shall grant a waiver if it determines that the intent of RSA 485:8, RSA 485:48 and RSA 485-C:21 will be met and human health and the environment will be protected. In granting the waiver, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be protective of human health and the environment.

(d) No waiver shall be granted to any requirement specified in statute unless the statute expressly allows such requirement to be waived.

(e) The department shall issue a written response to a request for a waiver. If the department denies the request, the reason(s) for the denial shall be clearly stated in the written response.

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

Env-Dw 303.25 Suspension or Revocation of Approvals.

- (a) For purposes of this section, "approval" means an issued permit or waiver, as applicable.
- (b) Upon finding that good cause as specified in (i), below, exists to suspend or revoke an approval, the department shall initiate an action pursuant to RSA 541-A:30, II, RSA 541-A:31, and the provisions of Env-C 200 applicable to adjudicative proceedings to suspend or revoke the approval.
- (c) The notice issued to initiate the action shall comply with RSA 541-A:31, III.
- (d) The department shall suspend the approval if the department determines, as a result of the proceeding initiated under (b), above, that:
- (1) The project would conform to applicable requirements if the deficiency were corrected; and
 - (2) If the basis for the action is that the information on which the approval was issued was incorrect, incomplete, or misleading:
 - a. The deficient information was submitted inadvertently or negligently; and
 - b. The approval would have been issued if correct, complete, and not misleading information had been submitted originally.
- (e) If the department suspends the approval, the decision issued pursuant to (h), below, shall:

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- (1) Specify a reasonable time in which the person to whom the approval was issued may correct the deficiencies which formed the basis for the suspension, established based on the type and quantity of deficiencies and the information and materials needed to correct them; and
 - (2) Notify the person to whom the approval was issued that if the deficiencies are not corrected within the time specified, the approval will be revoked.
- (f) A decision to suspend an approval pending receipt of adequate and correct information shall not be considered a final decision from which an appeal may be taken.
- (g) The department shall revoke the approval if the department determines, as a result of the proceeding initiated under (b), above, that:
- (1) The project cannot be made to conform to applicable requirements; or
 - (2) If the basis for the action is that the information on which the approval was issued was incorrect, incomplete, or misleading:
 - a. The permit holder submitted deficient information with the intent to mislead or to avoid one or more requirements of the statute or rules; or
 - b. The approval would not have been issued if correct, complete, and not misleading information had been submitted originally.
- (h) The department shall issue a written decision to the person to whom the approval was issued. If the approval is suspended or revoked, the decision shall specify the reason(s) for the decision.
- (i) Good cause to suspend or revoke an approval shall include the following:
- (1) The information on which the approval was based was incorrect, incomplete, or misleading;
 - (2) The project is not in compliance with the terms of the approval, including the plans approved and made part of the approval; or
 - (3) The person to whom the approval was issued is a chronic non-complier as defined in Env-C 209.01(c).

Source. (See Revision Note at part heading for Env-Dw 303)
#8998, eff 9-29-07

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-Dw 303.01 - 303.23	RSA 485:1, I(g) and RSA 485:3, XI
Env-Dw 303.24	RSA 541-A:22, IV
Env-Dw 303.25	RSA 541-A:30, II